



07 JUN 2006

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In re Application of
Kushmaro et al.
Application No.: 10/527,076
PCT No.: PCT/IL03/00725
Int. Filing Date: 03 September 2003
Priority Date: 09 September 2002
Attorney Docket No.: KUSHMARO1
For: Method For Isolating And Culturing
Unculturable Microorganisms

DECISION

This is a decision on the correspondence filed on 23 January 2006, which is being treated under 37 CFR 1.42.

DISCUSSION

This international application was filed on 03 September 2003 and claimed a priority date of 09 September 2002. The United States was designated. The International Bureau communicated a copy of the published international application to the USPTO on 18 March 2004. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 09 March 2005. On 09 March 2005, applicants filed *inter alia* the basic national fee.

On 26 September 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b), an initial computer readable form (CRF) of the sequence listing, and a statement that the sequence listing recorded on the CRF is identical to the written (on paper or compact disc) sequence listing, and, where applicable, contains no new matter.

On 23 January 2006, applicant filed the present response which was accompanied by, *inter alia*, a declaration of the inventors and an acceptable sequence listing in computer-readable form.

DISCUSSION

Inspection of the declaration of the inventors filed on 23 January 2006 reveals that joint inventor Shimona Geresh is indicated to be "deceased." 37 CFR 1.42 provides that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Further examination of the declaration documents filed on 23 January 2006 reveals that one of them names the same inventive entity as was nominated in the international application, indicates that Shimona Geresh is deceased, and has been signed by Ariel Kushmaro. The second declaration document filed on 23 January 2006 also names the same inventive entity as was nominated in the international application and is signed on behalf of Shimona Geresh by Shaul Geresh, who is indicated to be the "sole heir of Shimona Geresh, deceased," and indicates that he has "the authority corresponding to an executor or administrator under the laws of Israel." This declaration provides post office address, residence and citizenship information for Shaul Geresh, as well as citizenship and residence information (but not postal address information) for Shimona Geresh. However, in view of the fact that the post office address provided for Shaul Geresh is identical to the residence address provided for Shimona Geresh, it is presumed that this same address is also the former postal address for Shimona Geresh. Applicants are required to promptly notify the Office of PCT Legal Administration if this presumption is in error.

CONCLUSION

The declaration is ACCEPTED under 37 CFR 1.42, without prejudice.

This application is being forwarded to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is 23 January 2006.



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